



Review of HRM's Contribution to the Halifax Seaport Farmers' Market through the Community Facility Partnership Fund

December 2011



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Preamble

On August 5, 2008, a staff report was presented to Regional Council requesting approval for both the proposed Halifax Regional Municipality (HRM) Community Facility Partnership Fund policy and procedures, as well as a one million dollar grant to the Halifax Port Authority or its designate. The grant was to be used to acquire leasehold improvements associated with the development of the Halifax Seaport Farmers' Market. This was a multi-party initiative which received funding from the Provincial Government, the Federal Government (through the Atlantic Canada Opportunities Agency (ACOA)) and HRM. As well, there were loans received from various sources including the Port Authority and CEDIF (Community Economic Development Investment Fund) investors.

The Community Facility Partnership Fund was established in response to "large-scale capital requests from local non-profit groups, public institutions and business".¹ Funding for the program was made available through a budget allocation of \$1,000,000. The fund's aim is "to enhance HRM's social and economic sustainability through the development or strengthening of formal partnerships in collaborative, innovative capital initiatives"² and is based on the following six guiding principles:

- 1) support of local economic development,
- 2) creativity and innovation,
- 3) strengthening of local community, government, and non-government capacity,
- 4) community inclusion and access,
- 5) demonstrated impact on regional development, and
- 6) environmental sustainability.

On August 12, 2008, Regional Council approved the policy and procedures as recommended; the grant was approved subject to a detailed review of the terms and conditions of the funding.

On April 7, 2009, Regional Council approved the funding agreement between HRM, the Nova Scotia Farmers' Market Development Cooperative and the City Market of Halifax Cooperative Limited, to facilitate the disbursement of \$1,000,000 towards leasehold improvements associated with the Halifax Seaport Farmers' Market. According to the above-mentioned report to Regional Council (April 7, 2009), the following key conditions were said to be included in the funding agreement:

- the payment schedule authorized an initial payment of \$300,000, to be made upon proof of a fully executed construction contract, and two subsequent payments of \$350,000 each, the first payable upon proof construction was 50% complete, and the second upon proof construction was 100% complete. Proof was to be in the form of a Certificate of Completion delivered to HRM by the architect in charge of the project,

¹ Report to Regional Council dated August 5, 2008 "HRM Community Facility Partnership Fund: Proposed Policy and Procedures", Origin section, page 1, and Farmers' Market Funding Agreement dated May 4, 2009 page 1.

² Report to Regional Council dated August 5, 2008 "HRM Community Facility Partnership Fund: Proposed Policy and Procedures", Discussion section, "The Program's Aim", page 3.

- Nova Scotia Farmers' Market Development Cooperative was required to provide audited financial statements,
- Nova Scotia Farmers' Market Development Cooperative was required to act as Project Manager and provide HRM with indemnification,
- Nova Scotia Farmers' Market Development Cooperative (or a subleasee) was required to agree to be ineligible for any further HRM funding, municipal grant, donation, incentive or tax concession for a period of 20 years on the basis the organization serves primarily business and private interests,
- Nova Scotia Farmers' Market Development Cooperative was required, as a condition of funding to provide a detailed, long-term operating plan,
- the funding agreement included the requirement for retention of a professional project manager for the duration of the project.

Although the April 7, 2009 report to Regional Council requesting approval of the funding agreement includes a reference to Nova Scotia Farmers' Market Development Cooperative providing audited financial statements and acting as the Project Manager as key conditions of the agreement, neither of these requirements was included in the funding agreement attached to the report and subsequently approved.

The Office of the Auditor General (OAG) undertook this performance review of the Community Facility Partnership Fund's contribution to the Nova Scotia Farmers' Market Development Cooperative in order to understand the process used by HRM Administration to evaluate the proposal, the intended benefits HRM expected to realize from the \$1,000,000 contribution, and if these benefits have indeed been realized.

Objectives

The objectives of this review were:

- 1) to determine if the review process for the funding proposal provided sufficient due diligence to ensure the \$1,000,000 investment (grant) by HRM was appropriate,
- 2) to determine if the terms and undertakings as set out in the funding agreement have been met as well as the level of success of the project in meeting the aims of the Community Facility Partnership Fund,
- 3) to determine if the suggested outcomes of the contribution assist in achieving the goals of HRM (as set out in the Community Facility Partnership Fund's policy) and are measurable,
- 4) to determine if HRM followed up on the project specific outcomes as outlined in the funding agreement.

Scope

This project reviewed the decision-making process used by HRM leading up to the approval of the funding agreement on April 7, 2009. It looked to understand the due diligence process undertaken by HRM staff to ensure any contribution arising from the process was an efficient and effective use of HRM funds.

Methodology

The process involved in undertaking this review included:

1. reviewing the terms, conditions and policy as established for the Community Facility Partnership Fund,
2. interviewing staff involved in the proposal evaluation to understand their process,
3. reviewing the information provided to Regional Council related to the Community Facility Partnership Fund and the contribution to the Nova Scotia Farmers' Market Development Cooperative,
4. reviewing the agreement between HRM, Nova Scotia Farmers' Market Development Cooperative and the City Market of Halifax Cooperative Limited,
5. examining required reporting to determine if the requirements of the funding agreement have been met,
6. reviewing various other applicable documents including unaudited financial statements,
7. review of HRM processes used to evaluate the likely success of the proposed grant in achieving the goals of the program as proposed to Regional Council and the methods used to review actual performance.

Summary of Recommendations:

- 1.1.1 HRM Administration should review the process used to create (and fund) new programs to ensure those created align with and are in response to HRM's strategic priorities.
- 1.1.2 HRM Administration should undertake a review of current programs to ensure those currently in place align with stated strategic priorities.
- 1.2.1 To assist HRM with fully understanding the impact of future projects towards environmental initiatives and whether goals have been achieved, the OAG would recommend future funding agreements include a requirement to report on the progress of environmental initiatives and could include the following:
 - actual versus estimated construction costs, particularly as they relate to environmental components
 - actual versus estimated operating costs as they relate to environmental initiatives
 - actual construction and operating costs compared with estimated costs for a more traditional option.
- 2.1.1 The OAG recommends the evaluation criteria for the Community Facility Partnership Fund be formally established, agreed upon and incorporated into the policy to enable the consistent evaluation of all projects.
- 2.1.2 The OAG recommends any items considered critical in the decision criteria for the Community Facility Partnership Fund, such as the maintenance of the building as a public space, be included as a condition of funding in future funding agreements.
- 2.1.3 For all proposals evaluated under this program, HRM Administration should maintain one master file of the relevant information supporting the decision process. This file should be maintained by a particular staff position and not be tied to an individual staff member.
- 2.1.4 The OAG recommends all aspects of any program be fully developed, with the goals, evaluation criteria and processes set out prior to any funding being provided, as it is difficult for the OAG to accept a "learning as we go" approach when providing \$1,000,000 contributions.
- 2.1.5 For future projects, the OAG recommends HRM Administration complete a full and robust evaluation of all aspects of any funding proposal and not appear to rely solely on the assumption of work done by other levels of government. This is not to preclude HRM from relying on work done by others, but rather for HRM to ensure any information relied upon is a full, robust evaluation that meets appropriate due diligence responsibilities.

- 2.1.6 The OAG recommends the detailed evaluations for any future proposals be documented and retained in order to support and explain the decision made, if necessary. Also, a well-documented file will allow for performance evaluation based upon expected results used in the decision criteria to be compared to actual results. This will also allow the results of past contributions to improve the evaluation process for future requests.
- 2.1.7 For future projects, the OAG recommends the evaluation team consider the proposal specifically as it relates to HRM's strategic goals and not allow the involvement of other levels of government or private interests appear to cloud the decision-making process.
- 2.1.8 The OAG recommends a senior financial staff member be involved in any future evaluation teams, with the responsibility to ensure a proper and thorough financial analysis of all aspects of the proposal is completed and documented.
- 2.1.9 If HRM continues to participate in programs which should reasonably include a business plan/proposal evaluation as part of the evaluation criteria, the OAG recommends HRM should either:
- 1) specifically invest in staff to ensure they have the necessary skills, or
 - 2) if these will be infrequent projects, consider engaging outside expertise for the areas of evaluation which staff would not reasonably be expected to have expertise.
- 2.3.1 The OAG recommends HRM Administration take prompt steps to receive confirmation the building is LEED certified and to obtain the detailed five-year operating plan required by the agreement.
- 2.3.2 For future Community Facility Partnerships, the OAG recommends establishing specific bases in terms of vendor makeup, sales, attendance, etc., against which future performance will be measured. For example, one of the outcome measures included in the Farmers' Market funding agreement is "percentage increase in the number of immigrant vendors". In order for success against this expected outcome to be measured, there is a need to know/agree on the number of immigrant vendors there were at the previous market.
- 2.3.3 It is recommended for future projects, the agreed outcome measures be stated in terms, which are specific, measurable, achievable, relevant to the project, time specific, and relate to HRM's goals in providing the contribution. Again, following the example used in 2.3.2, what is the target percentage increase in immigrant vendors for this outcome to be considered a success?
- 2.3.4 For future grants, preferably any in excess of perhaps \$100,000 to any one organization, the request to Regional Council for approval should indicate specific quantified outcomes expected through the contribution.

- 2.3.5 For future grants, HRM Administration should be very clear when drafting a funding agreement, what information/reporting requirements are required related to future operations and what is the intended use of the information. HRM should limit the information it asks for to what it actually intends to use.
- 2.3.6 For future Community Facility Partnerships, if one of the key goals of HRM participation is the use of a facility for a specific purpose, the OAG recommends this purpose be specified in any funding agreement with the requirement of approval for any changes.
- 2.3.7 The OAG recommends HRM consider including the requirement to assign a member with the appropriate skills (for a minimum number of years) as a non-voting member to the Board of Directors of any organization receiving grants through this program.
- 2.3.8 The OAG recommends HRM Administration clarify the role of Government Relations and External Affairs and the Managing Director position for the division.
- 2.4.1 The OAG recommends Legal Services be fully involved in the drafting of any future funding agreements associated with the Community Facility Partnership Fund so the intention of staff and Regional Council is captured and enforceable within the agreement. Should staffing limitations not provide for this, alternatives should be considered such as use of standardized agreements along with legal consultation protocols.
- 2.4.2 The OAG recommends HRM Administration clearly define the role of Risk Management within HRM and provide guidance on what processes within the organization they should be involved with. As a minimum, the OAG recommends they should be involved in any process which will result in a new program or service.
- 2.4.3 The OAG recommends amending the current report format for Regional Council (and any other Committees of Regional Council) so there is a standard section in all reports which deals specifically with risk managements issues, such as the risks identified and possible approaches to mitigation.
- 2.5.1 The OAG recommends future Community Facility Partnerships include a budget for the specific use of the contribution, along with the total project budget. It may also be useful to report on the total budget allocations to the Partnership Fund to that date. This information would provide a level of assurance the current contributions can be considered aligned with the strategic goals of HRM and the success of the overall program to date.
- 2.5.2 In the future, HRM should provide a clearer mandate regarding the outcomes of the contribution and an approval role in any significant changes to the model proposed.

- 2.5.3 If the on-going sustainability of a venture is a requirement of HRM in making a contribution (as opposed to simply assisting with the creation of a building or public space), there should be an intensive review of the business model provided at the proposal stage to ensure all potential risks are identified and addressed. In addition, the review should thoroughly vet the financial assumptions to gain comfort the projected revenues and expenses are reasonable.
- 2.5.4 In the future, any proposals (of the magnitude of the Farmers' Market) for which financial sustainability is a key criterion, HRM should ensure the provision of audited financial statements is included as a requirement in any funding agreement drafted. In addition, the (HRM) right to audit clause should include the right to audit the ongoing operations, not just the use of the contribution for construction costs.

This recommendation is made recognizing the reality of these types of contributions in that the funds are essentially "sunk" when made. However, this recommendation is made to suggest if a continuum of contributions are made, an evaluation of the success of previous contributions will aid in understanding the likelihood of success of the currently proposed projects.

- 2.5.5 The OAG recommends HRM include a clause in any future funding agreements (of the magnitude of the Farmers' Market) requiring HRM approval of any significant changes in the project, such as the level of debt incurred, the total cost of the project, or any other items which might affect the decision to contribute.
- 3.1.1 In the future, for any grants made under this program, HRM should include the requirement for staff to report to Regional Council annually on the overall success of the program and the projects undertaken through the program in achieving the goals established for the contributions.
- 4.1.1 The OAG suggests if HRM had a Chief Risk Officer, HRM Administration and Regional Council might have received different advice in this situation regarding the importance and role of the Charter in the overall stewardship of HRM and the importance of considering the intent and spirit of the Charter when making decisions. In the absence of this role and advice, the OAG is, unfortunately, once again in the position of recommending ethics and corporate governance training for HRM Administration and Regional Council. This recommendation is not made as a criticism, rather is presented in a constructive manner, recognizing the high standards of corporate governance required in today's society. This type of training and discussion should assist the Administration and Regional Council (given the high office of the Mayor and Regional Councillors) in making decisions where the spirit of the Charter may not be adhered to and the quality of stewardship could be brought in to question.

- 4.1.2 In a situation where HRM could be seen as violating the spirit of the Charter (even if it does not violate the letter of the law), HRM Administration should be proactive and provide a clear and transparent rationale for the actions being taken to avoid the questions such as the ones the OAG is raising here.
- 4.1.3 The OAG recommends Regional Council investigate whether in fact the grant provided under this funding agreement does comply with the Charter.
- 4.1.4 Given the grant provided to the Nova Scotia Farmers Market Development Cooperative appears to be structured in such a way as to attempt to circumvent the overall restriction (but at the same time adhere to the letter of the law) in the Charter regarding the provision of direct financial assistance to a business or industry, the OAG recommends HRM Administration prepare clarification (with legal input) regarding what constitutes a “form of direct financial assistance” and what is intended by “business or industry” as discussed in Section 71(2) of the Charter, as well as the overall intent of the section itself.

Management Response from Richard Butts, CAO:

I have reviewed the report “Review of HRM’s Contribution to the Halifax Seaport Farmers’ Market through the Community Facility Partnership”, submitted to me on January 23 by your office. I am in overall agreement with the recommendations. HRM Administration has, as is now our stated practice, taken the individual recommendations under consideration and will develop a more comprehensive management response and work plan to address each individual issue identified in the report.

Several of the themes are consistent with recommendations from previous reports released by your office – primarily the Review of Concerts held on the North Common and the Corporate Grants, Donations, and Contributions report. Relevant information from the Farmers’ Market review will be taken into consideration to ensure proper alignment with work plans that have been developed to address these reports. The existing work plans broadly encompass several areas that relate to your most recent findings, such as grants administration, financial reporting, performance measurement, and legal services.

In keeping with past practices, the Audit and Finance Committee of Council will be briefed on the detailed response and fully engaged as work progresses. HRM Administration will continue to work with the committee to ensure that the range of recommendations made by your office are addressed in a coordinated and appropriate manner, while maintaining a high level of transparency and accountability in reporting.

Additional Comments by the Auditor General:

The OAG is very pleased with the continuing dialogue and comments provided by HRM Administration, following their review of our report entitled Review of the Community Facility Partnership's Contribution to the Halifax Seaport Farmer's Market; particularly the timely Management response as well as their agreement with the recommendations. We look forward to the Administration's implementation/work plan which will be presented in the near future to the Audit and Finance Committee. As always, we wish to thank the Administration and those with whom we interacted during the preparation of this report for the courtesies and patience extended to us.

Detailed Findings and Recommendations

1.1 Development of the Community Facility Partnership Fund

As a start to this review, the OAG discussed with HRM Administration the reasons why the Community Facility Partnership Fund was created. This appeared to be a reasonable starting point as one would assume there was a recognized strategic initiative which drove the creation of the new grants program, particularly one of such significant dollar value. According to staff, the fund was initiated to provide a means to deal with large-scale capital requests which HRM was receiving with some degree of regularity, and which did not fit into any existing program. In the years prior to the Fund's creation, HRM received several separate requests for funding for large-scale capital projects (i.e. Pier 21 Society, NSCAD, Halifax Farmers' Market Cooperative, Saint Mary's University, Soccer Nova Scotia, and Lake District Recreation Association) but had no mechanism to address them. If the receipt of the requests is truly the reason the fund was created, this raises the question of whether the fund is truly a strategic device or simply a means to fund high dollar value external capital projects. This led the OAG to question how the development of this fund compares to other HRM strategic initiatives and how all new programs are initiated. Does HRM have a strategic vision and then look for the most efficient and effective ways to implement the vision, or does it simply react to requests for funding?

In addition, as HRM had been receiving similar, large-scale capital requests for years, with no mechanism to address them, the OAG wonders what it was about this particular project which appears to have caused HRM to create a program to allow it to be funded.

Recommendations:

- 1.1.1 HRM Administration should review the process used to create (and fund) new programs to ensure those created align with and are in response to HRM's strategic priorities.
- 1.1.2 HRM Administration should undertake a review of current programs to ensure those currently in place align with stated strategic priorities.

1.2 Guiding Principles of Community Facility Partnership Fund

The stated goal of the Community Facility Partnership Fund is “to enhance HRM’s social and economic sustainability through the development or strengthening of formal partnerships in collaborative, innovative capital initiatives”³. More specifically, this fund was designed to help support economic development by investing in social and cultural infrastructure, which in theory, attracts new business and helps retain existing businesses, thereby enhancing HRM’s “quality of place”.⁴

To help guide this fund, the following six principles were set in place:

1. support local economic development
2. creativity and innovation
3. strengthening local community, government and non-government capacity
4. community inclusion and access
5. demonstrated impact on regional development
6. environmental sustainability.

One of the key criteria for this project appears to be environmental sustainability which is a strategic initiative for HRM. While it is important to support this initiative, it is also important to identify the associated costs so HRM is able to weight the desire for sustainability initiatives against fiscal constraints. There is anecdotal evidence throughout HRM regarding other unrelated environmental initiatives which are promoted as environmentally sustainable but cost HRM significantly more than the “next best” option with very little increase in environmental sustainability.

For example, in some cases, it is suggested the “environmentally friendly” option, which costs more to install than the traditional option, also costs more to operate. In other cases, the upgrades cost a significant amount but the efficiencies expected are marginal. The contribution which is the subject of this report has the appearance of potentially being another anecdote regarding an environmental initiative, which is not as successful as was originally expected.

The “Application for Support” from the Farmers’ Market Development Cooperative dated July 2008, included estimated costs and savings for energy conservation initiatives, but HRM does not have any specific performance measures related to actual costs versus savings to determine the value of innovation and environmental sustainability.

³ Report to Regional Council dated August 5, 2008 “HRM Community Facility Partnership Fund: Proposed Policy and Procedures”, Discussion section, “The Program’s Aim”, page 3.

⁴ IBID

Recommendation:

1.2.1 To assist HRM with fully understanding the impact of future projects towards environmental initiatives and whether goals have been achieved, the OAG would recommend future funding agreements include a requirement to report on the progress of environmental initiatives and could include the following:

- actual versus estimated construction costs, particularly as they relate to environmental components
- actual versus estimated operating costs as they relate to environmental initiatives
- actual construction and operating costs compared with estimated costs for a more traditional option.

2.1 Assessment of the Funding Requested by the Farmers' Market Development Cooperative

During the course of this review, the OAG met with staff who participated on HRM's team responsible for evaluating the proposal and eventually recommending Region Council approve the \$1,000,000 contribution to the Nova Scotia Farmers' Market Development Cooperative. Staff advised the evaluation process was developed in tandem with the overarching policy for the Community Facility Partnership Fund and as such, was not a full and robust process at the time. In addition, it was felt by staff both the review of the proposal and the development of the policy were expected to be completed within a very tight timeframe. The documentation supporting the evaluation process which was provided to the OAG gave no indication of the criteria against which the proposal was evaluated and it appears there was no comprehensive financial analysis completed regarding the viability of the proposed Farmers' Market. Staff stated their understanding of the goal from HRM's perspective was to create new public space and this project met this objective. The particular business occupying the space was not seen as important to the success of the project. This seems contrary to the Statement of Intent included in the "HRM Community Facility Partnership Fund Draft Policy and Procedures" approved by Regional Council on August 12, 2008. Included under Section 2; Statement of Intent, Strengthening Local Community, Government, and Non-Government Capacity is a statement which reads "the funded project is not simply a real property development; the rationale for municipal financial support is the manner and scope of the facility's impact on social and economic development".⁵

It is interesting to note there are no restrictions in the funding agreement concerning what the Nova Scotia Farmers' Market Development Cooperative could use the space for once construction was completed, nor is there a requirement to maintain it as a public space. An important point to keep in mind is what was/was not reviewed in the evaluation of the proposal and what HRM eventually funded.

As part of the review, the OAG asked to review the documentation created by the evaluation team supporting the evaluation of the request and the recommendation to provide funding. There was, however, minimal documentation available and the documentation which was available was found in various files of individual staff. As a result, there was no "master file" available containing all relevant information. The information obtained supporting the evaluation process contained only one team member's evaluation sheet and it provided no information regarding how the proposal met (or didn't meet) the evaluation criteria. It is also interesting to note the documentation provided to the OAG by the evaluation team supporting the request was an application for support directed to ACOA, and when questioned, staff advised this was the only information they received. The OAG separately obtained a letter dated September 18, 2007, which was provided to Regional Council formally requesting the \$1,000,000 contribution. As this was not included in the information provided to the OAG by the evaluation team, it raises concerns for the OAG regarding the process followed in this situation by HRM Administration in creating full and robust documentation supporting its decision process.

⁵ Report to Regional Council dated August 5, 2008 "HRM Community Facility Partnership Fund: Proposed Policy and Procedures", page 12 (Section 2 of Attachment 2)

It appears little, or no, thought was given to assessing if the proposed business was viable and there was no documented evaluation done (the OAG assumes this as none was provided after repeated enquiries) with regards to the business case submitted by the Farmers' Market Development Cooperative. In the opinion of one of the evaluation team members, there was an assumption they need not concern themselves with that type of analysis. To them the commitment by other levels of government implied the project must have been evaluated and must be viable.

According to some members of the evaluation team, one of the significant considerations in evaluating the proposal was the level of apparent community engagement in the project as indicated by the funding provided by members of the public, as well as the Federal and Provincial governments.

It is also interesting to note what appears to be an inconsistency between what staff believed was the form of public money support and how it actually took place. The sense the OAG received from staff was they felt the public were showing strong support for the project through their financial investment. The OAG understands this "support" was through the CEDIF - Community Economic Development Investment Fund - Program.

The CEDIF website has a section entitled "Cautionary Note", dealing with establishment and operation of a CEDIF as well as potential problem areas and risks. Within this section, two points became interesting when reviewed in light of staff being influenced by the public support, "The risk to the investor should be regarded as quite high."⁶ "Relative to other investment choices available in the market, therefore, the investors may have limited interest in a CEDIF".⁷ In fact, Section 10 (f) on Page 7 of the offering document for the "Farmers' Market Investment Cooperative" states "The shares are speculative in nature".⁸

According to staff, the funding from the other levels of government was implied to be contingent on HRM providing the \$1,000,000 contribution (this was confirmed by a letter of support dated June 21, 2007 provided by the Minister of Energy for the Province of Nova Scotia) and as a result, the evaluation team felt HRM needed to participate and could only deny the request if they had a very significant issue. Given staff perceived the goal was to increase public space and in their opinion, the proposal met the goal, funding for the project was therefore recommended.

It is the OAG's understanding the process used to assess requests for funding under this program have evolved each time proposals have been evaluated (a "learning as we go" approach), becoming more robust with each round of evaluations. However, based on our discussions with staff, the OAG feels there are still areas in the process which could be improved.

⁶ Form 1, www.gov.ns.ca/econ/cedif/background/cautionarynote.asp.

⁷ IBID.

⁸ Form 1, Offering Document, www.gov.ns.ca/econ/cedif/funds/FarmersMarket/docs/FARMersMarketofferingdocument2010.pdf, page 7, section (f).

Evaluation Documentation

It appears the assessment of the proposal was done on a subjective basis, with little documentation retained to provide support for how the decision was reached. This, along with the factors noted above, cause the OAG to question if the proposal was assessed fully on its own merits or if it was recommended for approval, at least in part, because of a perceived political desire to make the project happen. These points raise the question of who was leading this process and if, in fact, HRM was involved in another case of groupthink as discussed in previous OAG reports, although in this case it might be more accurate to call it “circular groupthink” as it seems to involve multiple organizations each assuming the other was leading the way. In this circumstance, it appears HRM spent \$1,000,000 and justified it as a good idea, largely because others were interested.

Staff Roles

Although this fund appears aimed at economic development, it seems the development of the program and the evaluation of the funding request were led by Community Development staff. The Manager of Economic Development was on the evaluation team for this proposal but the Managing Director, External and Corporate Affairs, to whom the Manager of Economic Development began to report as the evaluation of this project took place, does not appear to have been involved in the preparation or approval of any reports to Regional Council on the program. In addition, it appears, as noted in previous OAG reports, HRM again became involved in a program or situation which required staff to act outside their area of skill, experience and expertise. The evaluation of a proposed for-profit niche farmers’ market business is a specific, technical skill. Organizations such as ACOA and the Province of Nova Scotia, who provide assistance to business as a regular aspect of their operations, have staff with developed skills in this area. The OAG wonders why HRM would assume its staff could step in and provide the appropriate due diligence in such a specialized area.

Commercial Taxes

One point of discussion during this review was the structure of the agreement with the Nova Scotia Farmers’ Market Development Cooperative. HRM staff indicated it was their belief wording in the agreement was designed to transfer commercial tax responsibility to the grant receiving organization. This was a perceived benefit as the space would not have been commercially taxable otherwise. It was understood, HRM would receive new tax revenues, eventually recovering the grant amount, and the property would then contribute incremental tax revenue to HRM. While this is a laudable goal, its success is dependent on the financial viability of the Farmers’ Market (the leasee). Unfortunately, at the time of this report, the 2011 taxes remain in arrears, which will require additional HRM resources to collect the outstanding amount. Given the nature of this property and its ownership, the ability to collect through traditional means such as a tax sale is questionable.

Recommendations:

- 2.1.1 The OAG recommends the evaluation criteria for the Community Facility Partnership Fund be formally established, agreed upon and incorporated into the policy to enable the consistent evaluation of all projects.
- 2.1.2 The OAG recommends any items considered critical in the decision criteria for the Community Facility Partnership Fund, such as the maintenance of the building as a public space, be included as a condition of funding in future funding agreements.
- 2.1.3 For all proposals evaluated under this program, HRM Administration should maintain one master file of the relevant information supporting the decision process. This file should be maintained by a particular staff position and not be tied to an individual staff member.
- 2.1.4 The OAG recommends all aspects of any program be fully developed, with the goals, evaluation criteria and processes set out prior to any funding being provided, as it is difficult for the OAG to accept a “learning as we go” approach when providing \$1,000,000 contributions.
- 2.1.5 For future projects, the OAG recommends HRM Administration complete a full and robust evaluation of all aspects of any funding proposal and not appear to rely solely on the assumption of work done by other levels of government. This is not to preclude HRM from relying on work done by others, but rather for HRM to ensure any information relied upon is a full, robust evaluation that meets appropriate due diligence responsibilities.
- 2.1.6 The OAG recommends the detailed evaluations for any future proposals be documented and retained in order to support and explain the decision made, if necessary. Also, a well-documented file will allow for performance evaluation based upon expected results used in the decision criteria to be compared to actual results. This will also allow the results of past contributions to improve the evaluation process for future requests.
- 2.1.7 For future projects, the OAG recommends the evaluation team consider the proposal specifically as it relates to HRM’s strategic goals and not allow the involvement of other levels of government or private interests appear to cloud the decision-making process.
- 2.1.8 The OAG recommends a senior financial staff member be involved in any future evaluation teams, with the responsibility to ensure a proper and thorough financial analysis of all aspects of the proposal is completed and documented.

- 2.1.9 If HRM continues to participate in programs which should reasonably include a business plan/proposal evaluation as part of the evaluation criteria, the OAG recommends HRM should either:
- 1) specifically invest in staff to ensure they have the necessary skills, or
 - 2) if these will be infrequent projects, consider engaging outside expertise for the areas of evaluation which staff would not reasonably be expected to have expertise.

2.2 Genesis of Groupthink

In a previous report, the OAG spoke to concerns around groupthink and lack of role clarity. When the OAG discussed this topic with staff involved in the evaluation committee, there was agreement this had taken place. During this discussion an additional interesting point was raised which speaks to what the genesis of HRM groupthink might be. It once again speaks to roles and role clarity and reliance of one group on another. What appears clear is groupthink was at play. Staff mentioned on more than one occasion, they felt “compelled” to “do the deal”. They supported this thinking with the following:

- 1) something seemed “special” with respect to this project,
- 2) others within the same government unit appeared to support the project, and
- 3) the Provincial and Federal governments appeared to support the project.

With these thoughts as a backdrop, anecdotal evidence supports the hypothesis staff felt it was intended to happen and their role essentially was to “go along”.

In the view of the OAG, Regional Council had a mandate for bringing the vision or idea forward, which appears to have taken place. Staff (the evaluation team/directors of business units) had the responsibility on behalf of the taxpayer to carry out a thorough and appropriate due diligence of the “investment” and provide Regional Council with a fact-based analysis and recommendations to guide their final decisions. It is at this point, we question whether the staff role was undertaken as we have described. Through our work on this project, it became apparent line staff were following what they believed to be the direction of Regional Council and senior management within HRM Administration. With this in mind, it is concerning to note it appears neither the Managing Director, External and Corporate Affairs nor the Director of Community Development have a file on the project or the fund, neither participated in presenting information to Regional Council on the issue, and the Managing Director, External and Corporate Affairs does not appear to have been involved in the discussions surrounding the development of the Fund, the evaluation of the proposal or in the creation of the new \$1,000,000 initiative which appears to have a significant economic development goal.

2.3 Design of Funding Agreement

The funding agreement with the Nova Scotia Farmers’ Market Development Cooperative and the City Market of Halifax Cooperative Limited is the legal contract which provides the terms and conditions under which HRM provided the \$1,000,000 grant. In reviewing this funding agreement, the OAG noted it had been stamped “approved as to form” by Legal Services. However, the agreement included a number of clauses the effectiveness of which the OAG questions. For example:

- 1) Clause 7 requires the Nova Scotia Farmers’ Market Development Cooperative to provide a detailed operating plan for the first five (5) years the Halifax Seaport Farmers’ Market is in operation.

However, it does not give a time line for when it is to be submitted and there is no provision for the \$1,000,000 grant to be contingent on HRM’s receipt, acceptance or approval of the plan. As a result, the

OAG wonders what the reasoning was for including this requirement. To the best of the knowledge of the OAG, as of December 2011, a full year after the completion of the building and start of operations, this plan has not been received.

2) Clause 8 of the Funding Agreement states:

Payment by HRM to the NS Farmers' Market Development Cooperative shall be contingent upon the following conditions:

- a) The NS Farmers' Market Development (sic) will have received money for the construction of the Halifax Seaport Farmers' Market, from the Federal Government and the Government of the Province of Nova Scotia.⁹

The apparent intent of this clause is reasonable – to ensure the purported funding for the project is truly in place, ensuring construction will happen and minimizing the risk to HRM. Unfortunately, the language of the clause does not appear to provide this protection. For example, there is no requirement to provide proof the funding is in place prior to HRM issuing payment and there appears to be no recourse identified for HRM if it was determined HRM provided funding and subsequently found the clause was not met. Ideally, the clause should require this concern be resolved prior to HRM issuing any funding. In fact, in the situation with the Nova Scotia Farmers' Market Development Co-operative, there is no information available within HRM's files indicating (documenting) what, if any funding had been received prior to HRM making its payments.

- 3) A similar situation arises in clauses 10d and 10e. In both sections, the Nova Scotia Farmers' Market Development Cooperative is required to provide information after the completion of the building (and payment of all the funds) yet there is no provision for recourse if the clauses are not met. The OAG has to question the wisdom of issuing the full grant, before receiving all the items required by the agreement, without any funds being held back.
- 4) The agreement also contains a requirement to report on the following "project specific outcomes" based upon stated criteria:

- 1. Criteria:** Demonstrate consistency with the guiding principles of the Community Facility Partnership Fund by constructing an iconic, environmentally sustainable building on the Halifax waterfront, accessible to a diverse community of interests and provides a venue that is conducive for the development of local enterprises.

Outcome measures: LEED certified construction, leverage public investment to develop a \$9.75 Million Halifax Seaport Farmers' Market at Pier 20.

⁹ Farmers' Market Funding Agreement, dated 4 May 2009 between Halifax Regional Municipality, Nova Scotia Farmers' Market Development Cooperative, and City Market of Halifax Cooperative Limited, page 3.

- 2. Criteria:** Support implementation of HRM’s Economic Strategy by providing opportunities for immigrant entrepreneurs, small business owners, local artisans and rural producers to sell their products to a larger urban market and to promote awareness of the benefits of “buying local”.

Outcome measures: Percentage increase in a) the number of immigrant vendors; b) total number of local vendors; and c) estimated volume of sales in locally produced food and products.

- 3. Criteria:** Support implementation of HRM’s Regional Plan by furthering objectives related to urban design (HRM by Design); encouraging investment in the urban core; and increased liveability.

Outcome measures: a) Value of construction; b) Compliance with HRM Urban Design Guidelines; c) Percentage increase in commercial assessment; promote increased use of public transit by Seaport Market customers.

- 4. Criteria:** Enhance HRM’s brand recognition and reputation locally and internationally by developing a landmark, iconic building at a key entry point in the Halifax Gateway.

Outcome measures: a) Increased tourism revenues from Cruise ship passengers and other visitors interested in visiting the Seaport Farmers’ Market; b) recognition and promotion of the Seaport Farmers’ Market by tourism and destination marketing as a “must-see” venue in Halifax; c) enhanced international profile in external markets of the Seaport Market as a “next generation” farmers market that integrates key elements of economic, community and environmental sustainability.¹⁰

In reviewing the criteria and outcome measures, it appears specific, quantified targets were not set for this project. As a result, we are unable to determine what the specific project targets were or if these targets were achieved. In addition, there appears to be no link between achievement of the outcome measures and provision of the funding.

The funding agreement specified the Nova Scotia Farmers’ Market Development Cooperative would provide a final report to HRM which would describe all aspects of the work done, a financial statement for the period covered by the report, and all aspects of the work as related to the desired criteria and outcome measures outlined in “Schedule A: Project Specific Outcomes”. In the opinion of the OAG, without having first established a specific goal, a starting point to measure from, or criteria to assess

¹⁰ Farmers’ Market Funding Agreement, dated 4 May 2009 between Halifax Regional Municipality, Nova Scotia Farmers’ Market Development Cooperative, and City Market of Halifax Cooperative Limited, Schedule “A”, page 7. Please note: in the original document, the criteria were numbered in error as 1,1,2,3.

achievement, measuring the impact of the project specific outcomes in relation to the goals of the fund becomes difficult. For example, criteria #2 (shown above) is looking for a percentage increase in the number of immigrant vendors. In order to assess this, the OAG believes you first need to have agreed on how many immigrant vendors were there originally and who they were. Following this would be an agreement regarding what qualifies a vendor as an immigrant vendor – is it someone who personally immigrated to Canada; could it be someone whose parents immigrated to Canada, but they were born here; what if there are multiple owners – does it have to be 100% immigrant owned? This list of questions could continue on, but the point is to raise the issues the OAG faced when looking for information around these requirements. It is not practical to expect performance information if there was a lack of clear specific information at the beginning from which to measure.

In addition, when evaluation staff were questioned about the process used to develop the outcome measures and how they were reviewed, they advised the conditions were provided very late in the process by HRM's Economic Development staff and were not vetted, discussed or even reviewed as a team. The staff member leading the evaluation team felt the staff person providing the measures was the subject matter expert and therefore no review was needed. It is again interesting to note although this project has strong economic development and inter-governmental aspects, the Managing Director responsible for these areas does not appear to have been involved and did not sign off on the funding agreement or the reports to Regional Council. When the OAG asked the Managing Director about the lack of participation, the individual indicated the lead on the file was another department and they were not "assigned" responsibility for the project, although they did acknowledge their staff were involved. We provide these comments in a constructive manner, only to point out what many would consider an inconsistency between what might be expected given role title and what in fact appears to be contained within assigned responsibilities.

- 5) The OAG also noted the funding agreement with HRM contained no requirement to maintain the facility as a farmers' market or as a public space. Given staff felt the creation of the public space was a key criteria in recommending the project, it is concerning this is not protected in the agreement.

Expected Uses and Monitoring of Project Specific Outcomes

When the OAG and the evaluation team staff discussed the monitoring requirements associated with the outcome measures, staff indicated they do not feel they have the resources to follow up on these items, and would not necessarily use the information if, in fact, they did receive it. The OAG questions why HRM included these requirements if there was no intention to use the resulting information. In fact, two of the items required by the funding agreement have not yet been received – proof the building is LEED certified and a five-year operating plan.

Representation on the Board of Directors

It is also interesting to note the volunteer board of directors who oversee the Nova Scotia Farmers' Market Development Cooperative does not include representation from HRM. HRM requires representation on a number of volunteer Boards in order to protect its interests, even in organizations which receive significantly less than \$1,000,000 in funding from HRM. Given the magnitude of the grant in this situation, the OAG questions why representation from HRM on the Board of Directors was not included in the agreement, at least for some period of time.

Recommendations:

- 2.3.1 The OAG recommends HRM Administration take prompt steps to receive confirmation the building is LEED certified and to obtain the detailed five-year operating plan required by the agreement.
- 2.3.2 For future Community Facility Partnerships, the OAG recommends establishing specific bases in terms of vendor makeup, sales, attendance, etc., against which future performance will be measured. For example, one of the outcome measures included in the Farmers' Market funding agreement is "percentage increase in the number of immigrant vendors". In order for success against this expected outcome to be measured, there is a need to know/agree on the number of immigrant vendors there were at the previous market.
- 2.3.3 It is recommended for future projects, the agreed outcome measures be stated in terms, which are specific, measurable, achievable, relevant to the project, time specific, and relate to HRM's goals in providing the contribution. Again, following the example used in 2.3.2, what is the target percentage increase in immigrant vendors for this outcome to be considered a success?
- 2.3.4 For future grants, preferably any in excess of perhaps \$100,000 to any one organization, the request to Regional Council for approval should indicate specific quantified outcomes expected through the contribution.
- 2.3.5 For future grants, HRM Administration should be very clear when drafting a funding agreement, what information/reporting requirements are required related to future operations and what is the intended use of the information. HRM should limit the information it asks for to what it actually intends to use.
- 2.3.6 For future Community Facility Partnerships, if one of the key goals of HRM participation is the use of a facility for a specific purpose, the OAG recommends this purpose be specified in any funding agreement with the requirement of approval for any changes.

- 2.3.7 The OAG recommends HRM consider including the requirement to assign a member with the appropriate skills (for a minimum number of years) as a non-voting member to the Board of Directors of any organization receiving grants through this program.

- 2.3.8 The OAG recommends HRM Administration clarify the role of Government Relations and External Affairs and the Managing Director position for the division.

2.4 Involvement of Legal and Risk Management Services

As noted earlier, the signed funding agreement is stamped “approved as to form” suggesting some level of review by Legal Services, but key criteria mentioned in the report to Regional Council were not included and the language of some of the clauses does not appear to enable the intent of the clause. The OAG wonders what actual involvement Legal Services had in the process. Were they involved in the drafting of the agreement to ensure HRM’s interests were protected, or was it simply an administrative review approval process? This comment is not intended as a criticism, rather a constructive comment or question regarding process or possibly lack of clarity around process.

In addition, there appears to have been little or no input with respect to Risk Management throughout the process of establishing a new program, evaluating proposals or drafting of a funding agreement. Based on this situation, the OAG also wonders what the role of Risk Management is within HRM. The OAG understands the role of Risk Management at HRM started as a function responsible for the acquisition and management of insurance for HRM; however, in today’s world, Risk Management is a much broader responsibility.

According to the Risk and Insurance Management Society, Inc. (RIMS), “enterprise risk management is a strategic business discipline that supports the achievement of an organization’s objectives by addressing the full spectrum of its risks and managing the combined impact of those risks as an interrelated risk portfolio”.¹¹ In this context, the OAG wonders if HRM’s current Risk Management services are actively engaged in fulfilling this role, when should they be involved in an initiative, and at what level should their involvement be?

Also, the OAG notes there is little discussion of any risks associated with the Community Facility Partnership Fund or with this particular grant in the information provided to Regional Council. The OAG suggests, in the future, a discussion regarding risk should be an integral part of any information provided to Regional Council. As there are no activities which are without risk, it is important to provide clarity regarding the risks involved in any decision as well as HRM Administrations’ approach to mitigation.

Recommendations:

2.4.1 The OAG recommends Legal Services be fully involved in the drafting of any future funding agreements associated with the Community Facility Partnership Fund so the intention of staff and Regional Council is captured and enforceable within the agreement. Should staffing limitations not provide for this, alternatives should be considered such as use of standardized agreements along with legal consultation protocols.

¹¹ RIMS, What is ERM, www.rims.org/resources/erm/pages/WhatisERM.aspx

- 2.4.2 The OAG recommends HRM Administration clearly define the role of Risk Management within HRM and provide guidance on what processes within the organization they should be involved with. As a minimum, the OAG recommends they should be involved in any process which will result in a new program or service.

- 2.4.3 The OAG recommends amending the current report format for Regional Council (and any other Committees of Regional Council) so there is a standard section in all reports which deals specifically with risk managements issues, such as the risks identified and possible approaches to mitigation.

2.5 Financial Sustainability

To ensure the financial risk to HRM was limited and the contribution provided was directed to aspects of the project appropriate for public funding, HRM created a funding agreement with the Nova Scotia Farmers' Market Development Cooperative. The key conditions in this agreement were noted in the preamble of this report and included the requirement for the Nova Scotia Farmers' Market Development Cooperative to provide a detailed operating plan for the first five years the Halifax Seaport Market was to be in operation and a "final report" within three months of completion of the Halifax Seaport Farmers' Market. This final report was required to include a description of all work done, a financial statement for the period covered by the report, and aspects of the project meeting desired criteria and outcome measures outlined in "Schedule A: Project Specific Outcomes" as identified in Section 2.3 of this report. The Nova Scotia Farmers' Market Development Cooperative provided the final report in August, 2011, more than six months after the completion of the building (it is interesting to note the OAG project commenced in July 2011) but have not yet provided the detailed five-year operating plan.

The Nova Scotia Farmers' Market Development Cooperative provided a copy to HRM of their financial statements for the year ended Dec 31, 2010, which were prepared on a review basis. While a review of the operating results of the Nova Scotia Farmers Market Development Cooperative is beyond the scope of this review, the OAG feels a number of general points are in order in support of several of the recommendations being made.

This section of the report is included for illustrative purposes only. It is presented as support for the recommended need for a well-defined process to be in place on the part of HRM when significant grants are being made to any entity – particularly at the \$1,000,000 level. In the view of the OAG, this cannot be emphasized enough. The process should include, as a minimum, the following:

- a comprehensive due diligence process around the proposed "grant/investment", including a detailed review of all aspects of the financial proposal and the underlying assumptions,
- a detailed checklist of items to be included in the funding agreement(s) to be drafted to protect the interests of HRM (i.e. audited financial statements, recourse for non-performance, Board representation, etc.),
- a detailed list of the key financial criteria including the expected total dollar cost of the project, ownership of assets, level of debt, repayment terms for debt, etc.,
- a detailed schedule for ongoing follow up and monitoring, and assignment of the staff responsible for ensuring this follow up takes place.

The importance of the above points should become clear to HRM Administration upon their review of the December 31, 2010 financial statements which we understand were provided to them on August 23, 2011.

In addition, the OAG understands two consulting companies have been recently hired with respect to Halifax Seaport Farmers' Market Cooperative; focussing on assisting with generating interest in and managing the expanded weekday market and addressing governance and membership issues. This is a significant unanticipated expense to be incurred within the first full year of operations, and likely points to challenges within the business model which should have been identified and addressed when HRM was evaluating the proposal.

Overall, the financial results for the first year of operations as provided to the OAG raise concerns regarding the long-term sustainability of the Market in its present form and a review of more recent financial statements is warranted to determine if these results are simply the result of a slower than anticipated start up or if the projections submitted were overly optimistic. These questions reinforce the importance of assessing the business plans at the proposal evaluation stage to ensure the project is viable before committing any funds.

The original proposal from the Nova Scotia Farmers' Market Development Cooperative included budgeted costs for the project, a capital cost and financing plan but there was not a budget specific to the funds provided through the Community Facility Partnership Fund. When examining requirements of similar community facility funds in other jurisdictions, the OAG found a specific budget was often required, describing the specific uses of the contribution.

In addition, the funding agreement did not require the Nova Scotia Farmers' Market Development Cooperative to adhere to the plans submitted in order to receive the funds from HRM. This creates a significant risk to HRM in providing a contribution to a program, which could change significantly and potentially affect the sustainability of the program or could change the project in such a way so it no longer meets the evaluation criteria.

One of the six "guiding principles" of the Community Facility Partnership Fund is "a capital project shall demonstrate long-term sustainability"¹². The questions raised above regarding the sustainability of the Halifax Seaport Farmers' Market in its present form, result in additional concerns as to whether the grant has met the goal of the fund.

Recommendations:

2.5.1 The OAG recommends future Community Facility Partnerships include a budget for the specific use of the contribution, along with the total project budget. It may also be useful to report on the total budget allocations to the Partnership Fund to that date. This information would provide a level of assurance the current contributions can be considered aligned with the strategic goals of HRM and the success of the overall program to date.

¹² Report provided to Regional Council August 5, 2008 and approved August 12, 2008, "HRM Community Facility Partnership Fund: Proposed Policy and Procedures", Attachment 2, page 12.

- 2.5.2 In the future, HRM should provide a clearer mandate regarding the outcomes of the contribution and an approval role in any significant changes to the model proposed.
- 2.5.3 If the on-going sustainability of a venture is a requirement of HRM in making a contribution (as opposed to simply assisting with the creation of a building or public space), there should be an intensive review of the business model provided at the proposal stage to ensure all potential risks are identified and addressed. In addition, the review should thoroughly vet the financial assumptions to gain comfort the projected revenues and expenses are reasonable.
- 2.5.4 In the future, any proposals (of the magnitude of the Farmers' Market) for which financial sustainability is a key criterion, HRM should ensure the provision of audited financial statements is included as a requirement in any funding agreement drafted. In addition, the (HRM) right to audit clause should include the right to audit the ongoing operations, not just the use of the contribution for construction costs.

This recommendation is made recognizing the reality of these types of contributions in that the funds are essentially "sunk" when made. However, this recommendation is made to suggest if a continuum of contributions are made, an evaluation of the success of previous contributions will aid in understanding the likelihood of success of the currently proposed projects.

- 2.5.5 The OAG recommends HRM include a clause in any future funding agreements (of the magnitude of the Farmers' Market) requiring HRM approval of any significant changes in the project, such as the level of debt incurred, the total cost of the project, or any other items which might affect the decision to contribute.

3.1 Reporting

There are a number of reporting requirements included in the funding agreement with the Nova Scotia Farmers' Market Development Cooperative; however, there is no requirement to report to Regional Council on the results of the contribution as compared with the original goals. Given the significant contribution made to this project, a follow up report to Regional Council would be appropriate, identifying what the goals of the contribution were and if they were achieved, what went well and what could be improved on.

Recommendation:

- 3.1.1 In the future, for any grants made under this program, HRM should include the requirement for staff to report to Regional Council annually on the overall success of the program and the projects undertaken through the program in achieving the goals established for the contributions.

4.1 Adherence to the Intent of the Halifax Regional Municipality Charter (“the Charter”)

In reviewing the progression of the Farmers’ Market project, the OAG again questions what it was about this project which made HRM so intent on providing funding. The first report to Regional Council (presented September 18, 2007) was clear; the original request was made by a private enterprise (Halifax Farmers’ Market). The Municipal Government Act does not enable HRM to provide grants to private, for-profit enterprises. This is confirmed in Section 71 (2) of the Charter, which states “the Municipality may not grant a tax concession or other form of direct financial assistance to a business or industry”.¹³ In all future reports made to Regional Council on the subject, the recipient was changed as the grant was to be directed to be made through the Port Authority to the Nova Scotia Farmers’ Market Development Cooperative (a not-for profit whose stated primary role is “to help Farmers’ Markets that are for-profit cooperatives gain access to funding from ACOA for major infrastructure development projects”¹⁴). It is the view of the OAG, the Nova Scotia Farmers Market Development Cooperative then used the funds to provide financial benefit to the original for-profit applicant who didn’t qualify to receive the funds under the Charter.

During the August 12, 2008 Regional Council meeting when the \$1,000,000 grant was approved, a Councillor questioned if the grant was permitted as it appeared to fall within the restrictions noted on page 16 of the report to Regional Council from August 5, 2008. The Acting Chief Administrative Officer confirmed the grant could not be paid directly to the Farmers’ Market as it is a for-profit group and advised instead the recommendation had come forward to flow the funding through the Port Authority to be used for property (leasehold) improvements. The Acting Chief Administrative Officer also indicated the Farmers’ Market was considering incorporating a not-for-profit society to hold the lease on the property. Based on these comments, combined with the other information provided in the August 5th, 2008 and previous reports on the issue, there appears to have been a recognition the intent and ultimate beneficiaries of the funding was not permitted under the Charter. Most concerning, there appears to be a deliberate and thoughtful attempt to find a way around the letter of the Charter, without consideration for the purpose of the specific restriction contained within the spirit of the Charter. If this was truly an appropriate use of HRM funds, why not take a clear and transparent approach and request an amendment to the Charter?

The appearance in this case is the desire to support this project was so strong HRM Administration and Regional Council supported a mechanism which, while (apparently) ascribing to the letter of the law, appears to circumvent the intent of Clause 71 (2) in the Charter. The OAG received no definitive information regarding why this was an acceptable course of action.

The OAG is aware of certain sections of the Charter which speak to payments to Public Markets or Economic Development. It is the opinion of the OAG and Legal Counsel for the OAG, these sections

¹³ Halifax Regional Municipality Charter, Section 71 (2), page 30.

¹⁴ <http://farmersmarketnovascotia.ca/about-us/>, page 3

cannot be viewed in isolation of Section 71(2) and cannot be used to avoid the prohibition under Section 71(2).

As indicated previously, the funding agreement was reviewed to some degree by Legal Services. As a result, the OAG assumes it must adhere to the “letter of the law” in the Charter. However, the OAG has to question if this is correct as the funding agreement is an agreement between HRM, the Nova Scotia Farmers’ Market Development Cooperative (a not-for profit) and the City Market of Halifax Cooperative Limited, which the OAG understands is a for-profit cooperative, with none of the funding ultimately provided through the Port Authority. Given the Charter specifically prohibits the provision of any form of direct financial assistance to a business or industry, the OAG wonders if this grant has in fact breached the Charter.

Recommendations:

- 4.1.1 The OAG suggests if HRM had a Chief Risk Officer, HRM Administration and Regional Council might have received different advice in this situation regarding the importance and role of the Charter in the overall stewardship of HRM and the importance of considering the intent and spirit of the Charter when making decisions. In the absence of this role and advice, the OAG is, unfortunately, once again in the position of recommending ethics and corporate governance training for HRM Administration and Regional Council. This recommendation is not made as a criticism, rather is presented in a constructive manner, recognizing the high standards of corporate governance required in today’s society. This type of training and discussion should assist the Administration and Regional Council (given the high office of the Mayor and Regional Councillors) in making decisions where the spirit of the Charter may not be adhered to and the quality of stewardship could be brought in to question.
- 4.1.2 In a situation where HRM could be seen as violating the spirit of the Charter (even if it does not violate the letter of the law), HRM Administration should be proactive and provide a clear and transparent rationale for the actions being taken to avoid the questions such as the ones the OAG is raising here.
- 4.1.3 The OAG recommends Regional Council investigate whether in fact the grant provided under this funding agreement does comply with the Charter.
- 4.1.4 Given the grant provided to the Nova Scotia Farmers Market Development Cooperative appears to be been structured in such a way as to attempt to circumvent the overall restriction (but at the same time adhere to the letter of the law) in the Charter regarding the provision of direct financial assistance to a business or industry, the OAG recommends HRM Administration prepare clarification (with legal input) regarding what constitutes a “form of direct financial assistance” and what is intended by “business or industry” as discussed in Section 71(2) of the Charter, as well as the overall intent of the section itself.